

Application No. 10/716,586

182531-0004
(Formerly HMC-130US)**Remarks/Arguments:**

In response to the non-final Office Action, the applicant offers the following remarks. Claims 1-16 are pending. Applicant respectfully contends that the newly cited references do not anticipate or render obvious the pending claims.

The Office Action rejected independent claim 1 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 4,380,160, issued to Hoffman. Independent claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable under the Hoffman reference in combination with the Garvey et al. reference. Similarly claims 3 through 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable under the Hoffman and Garvey et al. reference in combination with one or more secondary references.

A. Claim 1 Recites Patentable Subject Matter

As presented claim 1 recites:

A protective cover for use with a locking device, said protective cover comprising:

a channel shaped protective shroud sized to cover at least part of the locking device, said protective shroud having openings at two opposite ends of the shroud;

means to affix the protective shroud in place over the locking device; and

a single hasp element to which the locking device engages under the protective cover, such that upon locking the locking device to the hasp element, the locking device can not be removed from the hasp element unless the locking device is unlocked.
(Emphasis added).

The claimed device is a *single element*, protective cover, that is sized and shaped to fit over at least part of the locking device, which may be a padlock. There is no need for, nor is there a claim to a separate base plate or bottom section. The cover is used to protect a locking device that is already in place and used to prevent access to an opening or accessway.

By contrast Hoffman discloses and teaches an apparatus for deterring theft of trailers that use a tow ring that has a central opening *and* upper and lower annulus surfaces. As shown and taught by Hoffman, the apparatus has *two separate elements* that make up the locking device. The two separate elements are *first* a base plate 26 with a

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hasp or tongue 30, and second a top plate 32 that fits over the base plate. There is no suggestion or motivation shown or explained in Hoffman to not have a base plate 26, or to have less than two distinct and separate elements.

Garvey et al. discloses and teaches a locking mechanism for truck doors that must have two hasp elements 34 and 36. The padlock shackle 38 fits through the two hasp elements to lock the two doors together. There is no suggestion or motivation in Garvey et al. to have the locking mechanism work with less than two hasp elements. Indeed, the Garvey et al. device could not work unless there is a hasp element attached to each of the two doors being locked together.

Similarly, the Garvey et al. cover has an opening 54 of limited size at the top of the enclosure 54 to receive and fit the cam rod 32. There is no suggestion or motivation in Garvey et al. to have a larger opening at the top of the enclosure 32. The teaching of Garvey et al. is not to have a "channel" or "U shaped" cover, but to have an enclosure with a very small top opening for the cam rod 32 and an opening at the bottom for the padlock to fit through. Like Garvey et al., the Garner reference does not teach or suggest any basis for the cover to be "channel" or "U shaped" as in the present invention.

The advantages of the subject matter of claims 1, 2, 9 and 16 are not attained or suggested by the Hoffman reference, the Garvey et al. reference or the Garner reference. This is because claims 1, 2, 9 and 16 contain features as described above that are not taught or suggested by the applied references. As explained by Judge Rich in *In re Civitello*, 144 USPQ 10, 12 (CCPA 1964), when a claimed feature is not disclosed by the reference, the reference cannot render the claim obvious:

Since Haslacher fails to disclose the feature of the claim relied on, we do not agree with the patent office that it would suggest modifying the Craig bag to contain the feature. The Patent Office finds the suggestion, only after making a modification which is not suggested, as we see it, by anything other than appellant's own disclosure. This is hindsight reconstruction. It does not establish obviousness. (Emphasis in original.)

Thus, the applicant respectfully does not agree with the Examiner that the Hoffman reference, Garvey et al. reference or the Garner reference support a *prima facie* case of anticipation or obviousness.

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Because claims 3 through 8, and 10 through 15 depend directly from a patentable claim, these dependent claims are also patentable. *See, e.g., In re McCarn*, 101 USPQ 411, 413 (CCPA 1954) ("sound law" requires allowance of dependent claims when their antecedent claims are allowed). Moreover, claims 3 through 8, and 10 through 15 are each non-obvious in view of the applied references.

C. Drawings

Applicant respectfully notes that the claims as originally presented, and as substantively amended do not provide any limitation as to the "angle" of the slot 41 or the location of the hasp. As shown and claimed, the hasp location need only be under the cover 10 for the inventive device to be functional. The angle of the slot 41 is not to be limited by the drawings because the hasp is enclosed within the shackle of the padlock when closed. Accordingly there is no particular limitation to the angle of the slot 41 with respect to the cover 10.

D. Conclusion

With this Response, applicant respectfully contends that pending claims 1 through 16 are in condition for allowance. The rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) should be withdrawn. Favorable action is earnestly solicited.

The Examiner is invited to call the applicant's undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicant respectfully requests the constructive assistance and suggestions of

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the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,


Kevin W. Goldstein, Reg. No. 34,608
Attorney for Applicant

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Stradley Ronon Stevens & Young, LLP
Great Valley Corporate Center
30 Valley Stream Parkway
Malvern, PA 19355-1481
(610) 640-5800

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Kim A. Kistler

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